

REMARKS/ARGUMENTS

In the non-final Office Action, dated March 9, 2004, the examiner rejected claims 1-27, 35-71, 74 and objected to claims 28-34, 72, and 73. Claims 1-22, 25-27, 35-68, 70, 71, and 74 were rejected under 35 U.S.C. 102(b) as being anticipated by Shaker et al., and claims 23, 24, and 69 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shaker et al. in view of Reichstein. However, the examiner also found that claims 28-34 and 72-73 recite allowable subject matter and would be allowable if rewritten in independent form.

Re Specification:

The change in paragraph 0024, line 2, corrects a typographical error. The changes in paragraph 0025, line 17, are made to conform the description to the drawing Figure 5A, which shows marker 72 as a pain marker and marker 74 as a cough marker.

Re Drawings:

The designator number 80 in drawing Figure 5A is inconsistent with the description in paragraph 0025, lines 20-23. Therefore, the designator number 80 in Figure 5A is changed to be consistent with the description in paragraph 0025, lines 20-23.

Re Claim 1:

Claim 1 is amended to include the allowable subject matter of claim 28. Therefore, claim 1 should now be allowable. Claim 28 is cancelled to avoid redundancy.

Re Claims 2-4:

Claims 2 and 3 are amended to depend from new independent claim 75, which will be discussed below. Claim 4 remains unchanged as depending from dependent claim 3.

Re Claims 5-6:

Claims 5 and 6 are cancelled without prejudice to the subject matter recited therein.

Re Claims 7-8:

Claims 7 and 8 are amended to depend from new independent claim 75, which will be discussed below.

Re Claim 9:

Claim 9 is cancelled without prejudice to the subject matter recited therein.

Re Claims 10-27:

Claims 10-27 remain unchanged and, with amended claim 1, they recite allowable subject matter.

Re Claim 28:

The allowable subject matter of claim 28 has been added to independent claim 1. Therefore, claim 28 is cancelled to avoid redundancy.

Re Claim 29:

Claim 29 has been found by the examiner to be allowable. However, claim 28 from which claim 29 depended has been cancelled. Therefore, claim 29 is amended to depend from amended claim 1.

Re Claims 30-31:

Allowable claims 30 and 31 are not changed.

Re Claim 32:

Allowable dependent claim 32 has been amended to independent form, including the subject matter from its former base claim 1. Therefore, claim 32 should be allowable.

Re Claim 33:

Allowable claim 33 remains unchanged.

Re Claim 34:

Allowable claim 34 is amended to independent form, including the subject matter of its former base claim 1. Therefore, claim 34 should be allowable.

Re Claims 35-39:

Claims 35-39 are cancelled without prejudice to the subject matter recited therein.

Re Claim 40:

Claim 40 is amended to depend from new independent claim 75 and is believed to recite allowable subject matter.

Re Claim 42:

Independent claim 42 is amended to include the allowable subject matter of dependent claim 73. Therefore, independent claim 42, as amended, should now be allowable.

Re Claims 43-71:

Dependent claims 43-71, which along with base claim 42, are believed to recite allowable subject matter and are unchanged, except that claim 56 is amended to delete the superfluous word “of”.

Re Claim 72:

Allowable claim 72 has been amended to independent form including the limitations of the former base claim 42. Therefore, amended claim 72 is believed to be allowable.

Re Claim 73:

The allowable subject matter of dependent claim 73 was amended into base independent claim 42, which is now believed to be allowable. Therefore, claim 73 is cancelled to avoid redundancy.

Re Claim 74:

Claim 74 is cancelled without prejudice.

Re Claim 75:

In the Office Action of March 9, 2004, the examiner construed the words in applicant's claims 1-22, 25-27, 35-68, 70, 71, and 74 broadly enough to assert that those claims are anticipated by Shaker et al., wherein two independent data loggers running on two independent timers collect data independently from two independent probes, and the data from the two independent data loggers are then entered sequentially into a computer where an attempt is made to correlate the two independent sets of data with their independent timing together for display and analysis. In that broad construction, the examiner construed the Shaker et al. computer to fit within applicant's recitation of a recorder, in spite of the description in the specification, paragraph 0024, which clearly describes the recorder, which collects

and processes data from the two separate probes with a single common timer circuit, as something distinct from the computer.

The examiner also asserted that, even if the two independent data loggers were connected sequentially to the computer, the computer would still “correlate” the signals and be “responsive” to signals from both probes. The problem with that assertion is that the specification defines “correlated” as “synchronized and integrated.” See specification, paragraph 0023. It is doubtful that even the broadest possible meanings of “synchronized” and “integrated” can be stretched far enough to include the Shaker et al. apparatus and processes. Synchronize means to take place at the same time; to operate in unison. Integrate means to make into a whole by bringing all parts together. Therefore, as defined by the specification, correlating with a common timer circuit means to bring the signals together in unison, at the same time, not sequentially at some later time.

New claim 75 recites the system of the present invention in a manner that cannot possibly be stretched to read on the Shaker et al. apparatus and methods or on any other prior art. Therefore, claim 75 is patentable under 35 U.S.C. 102(b). Further, two probes, adjustable in relation to each other for customizing sensor positioning to an individual person’s unique pharyngoesophageal dimensions, joined together for synchronized collection and integration of data from the sensors in the respective probes with a common timer circuit is unique and not shown or fairly suggested by Shaker et al. or any of the prior art references. Therefore, claim 75 is patentable under 35 U.S.C. 103.

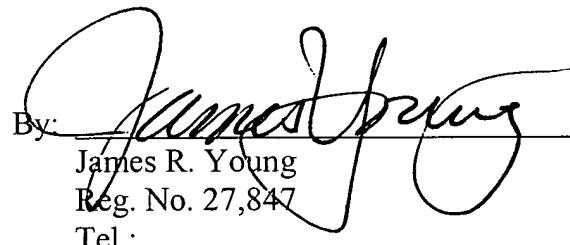
Re Claims 76-77:

New claims 76 and 77 are method claims, which are allowable for much the same reasons as explained in relation to claim 75 above.

SUMMARY

All of the currently pending claims 1-4, 7-8, 10-27, 29-34, 40, 42-72, and 75-77 are believed to be allowable for the reasons explained above. Therefore, the examiner is requested to grant an early allowance. If any issues remain to be resolved, the examiner is requested to contact applicant's attorney at the telephone number listed below.

Respectfully Submitted,

By: 
James R. Young
Reg. No. 27,847
Tel.:

Dated: 8/9/04